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July 21, 2022

By ECF

Honorable Ronnie Abrams
United States District Judge
Southern District of New York
40 Foley Square, Courtroom 1506
New York, New York 10007

Re: *Shamilov v. City of New York et al.*
20-cv-10224 (RA)

Dear Judge Abrams:

I am a Senior Counsel in the Office of Hon. Sylvia O. Hinds-Radix, Corporation Counsel of the City of New York, attorney for defendant City of New York (“City”) in the above-referenced action. As this Court is aware, the City’s Motion to Dismiss the Amended Complaint was fully submitted on May 5, 2022. See ECF Dkt. No. 88. While the City’s motion was being briefed, plaintiff also attempted to effectuate service on eleven (11) individually named defendants. See ECF Dkt. Nos. 89-99. Our office has engaged in the General Municipal Law § 50-k process and now represents the following individually-named defendants: Roy Abir, Valeska Alexander-Adams, Sanjeev Aggarwal, Akeem Ayinde, Kimberly Corker, Estella Dong, Ira Elias, William Hernandez, Harry Leonard, William Marshall, and Anne Mary Mukasa (collectively the “Represented Individuals”)¹.

We wish to make a motion to dismiss on behalf of the Represented Individuals. First, the anticipated motion would be based on the same grounds as set forth in the previously-filed motion made on behalf of the City. However, the motion would also assert arguments on behalf of the Represented Individuals in that: i) plaintiff’s federal claims against them are defective, as Title VII

¹ We highlight to the Court that although Kin Chan has been identified as an intended individually-named defendant here, to date we have received no indication that the plaintiff has effectuated or attempted to effectuate service upon him. We also note that our office has been informed Danita McGruder is deceased as of January 7, 2022.

does not provide for individual liability; ii) the Amended Complaint fails to plead sufficient facts to satisfy the requirements of the State and City Human Rights Laws that an individual defendant must either actually participate in the conduct giving rise to the discrimination or aid and abet the alleged discrimination; and iii) plaintiff's Religious Freedom Restoration Act claims are defective, as the Act does not apply to state and local governments, and is intended to provide a cause of action against federal officers, which the Represented Individuals are not.

Therefore, I request a pre-motion conference to address these issues with plaintiff and to seek the Court's guidance on proceeding with motion practice in that many of the Responding Defendants' arguments have already been briefed on behalf of the City in the currently-pending motion. For scheduling purposes, I will be on a planned vacation from August 10 through August 24, 2022.

Thank you for your consideration of this request.

Respectfully Submitted,
s/ Nicholas Schaefer
Nicholas Schaefer
Senior Counsel

cc via ECF:

Aleksandr Shamilov
Plaintiff Pro Se

For clarity and efficiency, and in light of the common issues of law and fact between the pending motion to dismiss and the Represented Individuals' contemplated motion to dismiss, the Court intends to resolve the motions together. Accordingly, the City's pending motion to dismiss is denied as moot, and the City may file a revised motion to dismiss reiterating its existing arguments together with any additional arguments with respect to the Represented Individuals. Defendants' motion shall be filed no later than September 6, 2022 and may not exceed forty pages. Mr. Shamilov shall file any opposition by October 24, 2022 (also not to exceed forty pages), and Defendants' reply shall be filed by October 31, 2022.

Separately, if Mr. Shamilov intends to pursue this case against Kin Chan, who is retired, Dkt. 75, or the Estate of Danita McGruder, who is deceased, *id.*, he shall file a letter no later than July 29, 2022 expressing his intent to do so. **If Mr. Shamilov does not file such a letter expressing an intent to continue this action against Chan and McGruder, those two individuals will be dismissed from the case for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).**

The Clerk of Court is respectfully directed to terminate the motion at Dkt. 42.

SO ORDERED.



Hon. Ronnie Abrams

07/22/22